

HUMAN SERVICES BOARD

# INTRODUCTION

## DISCUSSION

<sup>1</sup> See 33 V.S.A. § 6906 (c).

the petitioner that the report of neglect by the petitioner had been substantiated. The notice included specific instructions and deadlines regarding an appeal. The Department sent the notice to the petitioner by certified mail, and the petitioner signed for it on February 2, 2007. The petitioner filed her appeal with the Human Services Board on December 14, 2007 (via a handwritten letter dated December 12, 2007), more than ten months following the Commissioner's administrative decision.

Rule No. 1 of the Board's Fair Hearing Rules provides that DAIL appeals "must be made within 30 days from the date the grievance arose, unless otherwise provided by statute." The pertinent statute in this matter, 33 V.S.A. § 6906(d), provides:

A person may, within 30 days of notification that a report has been substantiated, apply to the human services board for relief on the grounds that it is unsubstantiated. The board shall hold a fair hearing under section 3091 of Title 3.

Under the above provisions, the petitioner's appeal in this matter was clearly out of time. The petitioner argues that other provisions in the same statute allow appeals "at any time". However, the provisions cited by the petitioner are clearly inapplicable.

33 V.S.A. § 6911(d) appears in a section of the statute titled "Records of abuse, neglect and exploitation". It provides that "a person may at any time apply to human services board for relief if he or she has reasonable cause to believe that the contents of the registry or investigative records are being misused". In a letter to the Board dated January 10, 2008, and during the telephone conference in this matter on January 11, 2008, the petitioner clearly indicated that her dispute is with the Department's decision substantiating the report of neglect in the first place, not with how the Department is using or disseminating the information contained in that report. She is alleging nothing that she didn't raise, or couldn't have raised, either in her administrative hearing in January 2007 or in a timely appeal of the decision that followed that hearing. Therefore, her reliance on § 6911(d) (*supra*) is misplaced.

The petitioner also cites 33 V.S.A. § 6911(e), which provides: "A person may at any time apply to *the department* for expungement of his or her name from the registry. The petitioner shall have the burden of showing why his or her name should be expunged from the registry." (Emphasis added.) It is clear that this provision is intended to allow the Department the discretion to reconsider keeping reports in

the registry once they have already been substantiated. However, this discretion lies solely with the Department in the first instance. The petitioner is free to make such application to DAIL at this (or any) time, but any appeal to the Board of any subsequent action (or inaction) by the Department under this section will be limited to whether the Department abused its discretion in its application of this provision. Nothing in statute indicates that the above provision operates as an exception or counter to the thirty day appeal requirement in § 6906(d), *supra*.

ORDER

The Department's Motion to Dismiss is granted.

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